

PLANNING AND ZONING COMMISSION
Monday August 13, 2007 – MINUTES – Regular Session

Call to Order: Time In: 7:00 p.m.

The Planning and Zoning Commission of the Village of Canal Winchester met on the above date for a regular session and was called to order by Mr. Christensen.

Roll Call

Present: Mr. Christensen, Mr. Graber, Mr. Harper, Mr. McCoy, Ms. Solomon, Mr. Vasko and Mr. Wynkoop.

Approval of Minutes

Mr. Harper made a motion to approve the minutes of the July 9, 2007 regular meeting with the following correction: Under Application #PA-07-03, the second line should say 1½ story addition “due” to Mr. McCoy seconded the motion. Voting yes were Mr. Christensen, Mr. Graber, Mr. Harper, Mr. McCoy, Ms. Solomon and Mr. Vasko. Mr. Wynkoop abstained. The motion passed 6-0-1.

Public Comment

There were no public comments.

Executive Session

Mr. Harper made a motion to go into executive session to discuss a threatened legal and quasi judicial matter and asked to have Gene Hollins, Village Solicitor, join them. Mr. McCoy seconded the motion. The motion passed unanimously. Time Out 7:03 p.m.

Mr. Christensen called the Commission meeting back to order: Time In 7:20 p.m.

Administration of Public Oath

Mr. Christensen administered the public oath.

Mr. Harper informed Mr. Christensen that he will recuse himself from the next agenda item based upon a personal letter sent to him from Vorys, Sater, Seymour and Pease (counsel for Burger King). In the letter they warn Mr. Harper of his continued participation in the Burger King matter, which will result in charges being considered against him with appropriate ethical boards and potential lawsuits against him personally.

Mr. McCoy informed Mr. Christensen that he will also recuse himself from the next agenda item. He received a threatening letter from the counsel for Burger King warning that if he continued to participate in this matter that it could result in charges against him and his family personally, which would be devastating to his wife and three children.

Mr. Christensen accepted both Mr. Harper and Mr. McCoy's request to be removed from the Burger King remand hearing, and they stepped away from the building.

Council Remand Appeal Back To Planning and Zoning Commission

Allan Neimayer, Planning and Zoning Administrator, stated that Village Council voted to remand Burger King's Appeal of Conditional Use #CU-07-02 back to the Planning and Zoning Commission for further consideration of the additional material provided by the applicant at Council's public hearing and for written findings and conclusions by the Commission.

Mr. Hollins instructed the Commission on what their instructions were to do with this remand from Council. He encouraged them to hear the presentation of the applicants and staff and conduct the factual part and take the matter under advisement.

Mr. Neimayer reviewed the information in the Commissions packet, including a new traffic study that was presented at Council's public hearing and is new information to the Planning and Zoning Commission.

Joe Miller, of Vorys, Sater, Seymour and Pease, representing Burger King, stated that if the Commission intends to proceed with the Village presenting evidence related to the applicants hearing, first of all he believes this is Burger King's application and that Burger King should be presenting. Second he would like to state their objections to Council's remand and that they do not believe that the Village has the power to remand the hearing back to the Planning and Zoning Commission. He restated that they object to the remand proceedings, they object to Mr. Christensen's continued participation in this matter, and they object to any evidence from ADR. EMH&T is present on behalf of the applicant, and they object to any additional evidence being presented by the Village to this Commission.

Albert Siemer of ADR and Associates (back up village engineer), stated that the numbers provided by CESO, from their letter addressed to Will Wannemacher, they were to address any issues with Gender Road not to the Service Road. Mr. Siemer believes that the service road and the intersection at Winchester Blvd. should be addressed. There is a traffic issue at peak hours at the current condition. He believes they (CESO) should provide a traffic study stating present conditions and post conditions after the Burger King would be built.

Joe Miller, of Vorys, Sater, Seymour and Pease, representing Burger King, reviewed the proceedings up until this point. He reviewed the points on ingress and egress, as well as the development plan for the area. He also stated his objections to the Village having ADR review the documents given to the Village at Council's public hearing. Will Wannemacher, construction manager for Burger King, reviewed the proceedings of the June Planning and Zoning Commission meeting as well as the July Council meeting. James Leeseberg, EMH&T, representing the applicant, answered questions from Mr. Miller regarding the traffic study. Jordan Parker, of CESO, also answered questions from Mr. Miller in regards to the traffic study.

Mr. Vasko asked Mr. Miller about the "Gender Road Improvement Plan." Mr. Miller believes that this applies to the entire area, not just Gender Road.

Mr. Christensen stated the Commission has thirty-five days or less to give an answer.

Mr. Christensen opened the floor for public comment on the remand of Burger King.

Jeffrey Bond, 36 Washington Street, stated he was against Burger King's request.

Mr. Vasko made a motion to close the public hearing. Mr. Wynkoop seconded the motion. The motion passed unanimously.

Mr. Wynkoop made a motion to take the remand appeal matter under advisement. Mr. Graber seconded the motion. The motion passed unanimously.

Mr. Miller inquired as to when would the executive session take place for deliberation? Mr. Hollins stated that there will likely be an executive session for deliberation this evening and that he may have an interest in coming to the September Planning and Zoning Commission meeting.

Pending Applications

Mr. Christensen noted that Mr. Harper and Mr. McCoy have rejoined the Commission.

Application #PA-07-03 The property owner and applicant, Joe and Kelly Abbot of 59 West Columbus Street, are requesting to remove existing 1½ story addition due to un-repairable damage and deterioration and replace it with a 2-story structure. Allan Neimayer gave the staff report. This application was tabled awaiting recommendations from the Landmarks Commission. Landmarks agreed that dimensional shingles would be appropriate for this home. Joe Abbot was present to answer questions from the Commission. Mr. Abbot asked if he could have the option of either dimensional shingles or standing seam roof as he is still considering cost of these two options.

Mr. McCoy made a motion to approve application #PA-07-03 approving dimensional shingles or a standing seam roof. Mr. Harper seconded the motion. The motion passed unanimously.

Application #VA-07-11

The property owner and applicant, Kenneth and Toni Elliott of 7795 Ashstone Court, are requesting a variance to the Ashbrook Village development text regarding the rear yard setback. Andrew Dutton, Zoning Officer, gave the staff report. Ken Elliott was present to answer questions from the Commission.

Mr. Elliott inquired what the setback is from, is it the post construction or the edge of the deck? Mr. Neimayer stated that the setback is from the edge of the deck, not the posts. Mr. Elliott asked if he reduced the size of the deck to only ask for a one foot variance instead of a three foot variance.

Mr. Christensen opened the floor for public comment. There was none.

Mr. Vasko made a motion to close the public hearing. Mr. Wynkoop seconded the motion. The motion passed unanimously.

Mr. Neimayer informed the Commission of Section 1183.02 (b) "Eaves, cornices, canopies, windowsills, belt courses and any similar architectural feature may project into any required yard a distance not to exceed twenty-four (24) inches." The Commission discussed with the applicant on modifying the location of the deck's posts whereby the overhang of the deck would be allowed per this section of the Zoning Code. Mr. Vasko suggested the Commission table this application to allow the applicant to modify his plans and for the Commission to consider the application/intent of Section 1183.02 (b).

Mr. McCoy made a motion to table Application #VA-07-11 to get new drawings with a twenty-five foot setback and to allow the Commission to consider the application/intent of Section 1183.02 (b). Mr. Vasko seconded the motion. The motion passed unanimously.

Application #CU-07-03 & #PSP-07-04

The property owner and applicant, Damon Pfeifer of 620 Winchester Pike, is requesting a Conditional Use to allow for wine preparation and sales in an R-3 District and Preliminary Site Plan approval to expand an existing pole barn and add a parking area to conduct wine preparation and sales. Mr. Neimayer gave the staff report. Damon Pfeifer was present to answer questions from the Commission.

Dave Dye with the law firm of Bailey Cavaleri, represented Damon Pfeifer. Mr. Dye stated that the current code does not give a definition of premises. There is nothing in the code that states that all the agriculture has to be done on one lot, only the premises.

Mr. Pfeifer also answered questions from the Commission. Mr. Wynkoop asked whose address is 700 Winchester Pike? Mr. Pfeifer stated that all the property is under 700 Winchester Pike except his house and this lot.

Mr. Wynkoop asked about the specific approval for the existing pole barn. It was to store agricultural equipment there. Where was he storing that equipment now? Mr. Pfeifer stated he has a purchased another lot on Gender Road that has a barn on it. That is where the equipment is being stored now.

Mr. Christensen opened the floor for public comment.

Connie Jackson, 639 Winchester Pike. She was originally against the purposed use as a "bar" but thinks the winery would be a great addition to the area.

Brad Mitchell, 6784 Lakeview Circle. Asked if there are any alternatives that can be given to run the operation out of the pole barn? He thinks the winery would be a great addition to the area. Mr. Mitchell believes that this is only being turned down because of the last name Pfeifer.

Mr. Christensen stated that many of the Commission members have stated that they would enjoy having a winery. For Mr. Mitchell to state it has to do with the last name that has nothing to do with it. As far as what alternatives can be given, it can be moved into the GC zoned area as a permitted use. Moving a winery into a pole barn versus the original drawings that were presented to the Commission is disappointing.

Susan Lones, 565 Winchester Pike. Stated that she was against the pole barn in the first place. She does not want a winery here. She has a quiet street and wants to keep it that way. It will create too much traffic. If the address for the pole barn is with his property, which is 620 Winchester Pike, then the liquor license will also need to be for that same address. The liquor license that was approved is for 700 Winchester Pike. He will need to get another liquor license.

Sally Werle, 560 Winchester Pike. Stated that she does not want a winery on Winchester Pike. Mr. Pfeifer will not stop at the winery. She believes he will continue to add to it until it is the restaurant that he is wanting. Ms. Werle also stated that at the end of the last meeting she was verbally attacked by Mr. Herb Pfeifer. He told her they were going to put the bar and restaurant

in behind her house and there was nothing she could do about it. She did call the Sheriff after that meeting. She was also concerned about any recourse she may have for attending this meeting. She also mentioned receiving an e-mail from Henrietta Pfeifer that said she is no longer welcome to come to the Mid-Ohio doll museum, all because of this matter.

Glen Faught, 691 Winchester Pike. He is totally opposed to the winery. He still has construction equipment at the pole barn. He believes that the traffic will cause a problem, especially for the children that live on that street.

Kathy Faught, 571 Winchester Pike. Stated that she is against the winery for all the same reasons as her neighbors have stated.

Jeffrey Bond, 36 Washington Street. He supports the winery.

Mr. Harper made a motion to close the public hearing. Mr. Graber seconded the motion. The motion passed unanimously.

Mr. Dye clarified that Mr. Pfeifer is only putting the winery in the pole barn as "Plan B." No hard liquor will be served.

Mr. Graber asked where are the grapes coming from. Mr. Pfeifer stated from the back property. But not at first. Grapes will be brought in from other places. Mr. Pfeifer also stated that different grapes will continue to be brought in in order for him to be able to make different kinds of wine.

Mr. McCoy stated that Council originally approved the pole barn with specific uses. He is in agreement with Council. The Commission continued their discussion on the approval of the pole barn. Mr. McCoy stated that the proposed use is not the use that Council approved for the pole barn. Mr. Harper stated that this would be a permitted use in the GC area and that he would like to see the winery in that area.

Mr. McCoy made a motion to approve application #CU-07-03. Mr. Harper seconded the motion. The motion failed 1-6. Voting yes: Ms. Solomon. Voting No: Mr. Christensen, Mr. Graber, Mr. Harper, Mr. McCoy, Mr. Vasko and Mr. Wynkoop.

Mr. Wynkoop made a motion to table application #PSP-07-04 pending an appeal of #CU-07-03 to Council. Mr. Vasko seconded the motion. The motion passed unanimously.

Old Business None.

New Business

1. Altercare Nursing Home development – SW corner of Thrush Drive and Groveport Road: consider changes to the original approved site plan (#FSP-05-13) – layout and building materials. Mr. Neimayer informed the Commission of changes made to the site plan included with the building permit application. Mr. Neimayer determined those changes were significant to the final site plan approved by the Commission back on March 13, 2006. Jim Walch of Reeder Architects, agent for the applicant, was informed that this matter would have to go before the Commission for their consideration.

Jim Walch of Reeder Architects was present representing the applicant/property owner Altercare of Ohio. Mr. Walch said the changes to the paved areas were done after working with the owner's of Potter's Lodge and not coming to an agreement to use the Potter's lodge property as an access. Madison Township Fire Department requires access to the rear of buildings in the event of an emergency. Mr. Walch indicated this cannot be completed with the joint use of the Potter's lodge property. Mr. Walch also reviewed the changes to the exterior materials on the building.

Mr. Vasko asked for plans showing the landscaping. A discussion ensued regarding what could be done with the access drives that the fire department would allow as well as what exterior materials would be allowable. The Commission directed Mr. Walch to consider alternatives for accessing the rear of the building and submit revised drawings for the Commission to consider at their September 10 meeting.

2. Meijer Store development – 8300 Meijer Drive: consider color change of the approved building materials. Mr. Neimayer stated that the representative from Meijer was not able to make the meeting and he would reschedule this discussion.

Planning and Zoning Administrator's Report

1. Mr. Neimayer informed the Commission that the appeal for Swan Cleaners was upheld by Council.

Executive Session

Mr. Wynkoop made a motion to go into executive session for the deliberation of a quasi judicial matter. Mr. Graber seconded the motion. The motion passed unanimously. Time Out: 10:36 p.m.

Mr. Christensen called the Commission meeting back to order: Time In: 10:58 p.m. Mr. Christensen stated for the record that Mr. Harper and Mr. McCoy had left the meeting and did not take place in the executive session.

Adjournment

Mr. Wynkoop made a motion to adjourn this regular meeting of the Planning and Zoning Commission. Mr. Vasko seconded the motion. The motion passed unanimously, 5-0.

Time Out: 10:58 p.m.

Date _____

Bill Christensen, Chairman

Mike Vasko, Secretary